



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

draws a distinction between conveyances before and after marriage is *Windolph v. Girard Trust Co.*,⁷ where a deed by a married woman of her separate estate to trustees to hold for her for life and at her death to distribute among certain beneficiaries, was held valid although its effect was to deprive the husband of the share to which he would have been entitled had she died possessed of this property. Justice Mestrezat, in discussing the rights of a wife in her separate property, held: "She may sell her personal property, give it away, or make any other disposition of it she desires during her life and he cannot complain, for the all-sufficient reason that he has no interest in the property. She is the owner and has absolute control over it and hence in disposing of it during life she infringes no property or other right of her husband. He does not sustain the relation of creditor to his wife. If she does not die vested of it, he can never acquire any interest in the property. It is manifest, therefore, that having no right or interest in the property as husband, there are no marital rights of which he can be defrauded by his wife's disposal of the property during life by gift or otherwise. . . . The present case is not a secret voluntary conveyance of her property by a party in contemplation of marriage without the consent of her husband. That was declared to be a fraud upon the marital rights of the other party, and, of course, avoided the transfer of the property as to him."

It is submitted that this decision is correct on its facts, but that the distinction which the court attempted to draw between transfers before and after marriage is unsound. The arguments advanced to support the disposition after marriage apply with equal force to a disposition before marriage; in neither case should the transfer be set aside, because in neither case is there any right which is injured.

T. R. Jr.

WILLS—DEPENDENT RELATIVE REVOCATION—The interesting question of dependent relative revocation was brought up in a recent Pennsylvania decision.¹ In that case the testator, believing that his estate would be rather small deemed the residue a suitable gift for his executors and so willed, but later, having ascertained that after the payment of debts and legacies, there would be a residue of more than \$150,000, he wrote a codicil, within thirty days of his death, in which he bequeathed the residue to a charity, adding these words: "In order to carry out the foregoing bequest, clause No. 29 of my will, giving the residue to my executors is hereby abrogated." The executors contended that the revocation was dependent upon the fulfillment of the bequest, but the court took the view of the heirs that where a bequest with revocation of inconsistent be-

⁷ 245 Pa. 349 (1914).

¹ *Melville's Estate*, 245 Pa. 318 (1914).

quests attached, fails not through any defect in the instrument itself, but through the incapacity of the devisee or legatee to take, through some statutory disability as mortmain acts, *etc.*, the doctrine of dependent relative revocation does not apply and the decedent is intestate as to that portion of his property.

The doctrine of dependent relative revocation is an attempt on the part of disappointed legatees to make a condition intended out of a reason given, in order to secure to the testator his elusive "second choice." It operates on two theories in different lines of cases. The narrower and more legitimate application of the doctrine is to declare a revocation void if based on facts which the testator believed to be true, but which are in fact false and which were not within the personal knowledge of the testator.² The plaintiffs, the executors, in the Melville case³ rested on the broader view of the doctrine that in every case where there is a reason given for a revocation and that reason fails, the revocation should be void, on the theory that the revocation was conditional upon the carrying out of the whole purpose of the testator. In England, the courts have gone so far on this theory as to hold that when a man revokes an old will, knowing he has no other, but with the intention of making another, the revocation will be considered conditional upon the execution of a new will.⁴ Under practically the same circumstances in a comparatively recent case in Pennsylvania, the court would not listen to evidence tending to show that the revocation was to depend on the making of a new will and the result of such revocation was clearly shown by the court: "She intentionally destroyed the will, declaring that she meant to make another. She knew what she was doing and the effect of it and she did it *animo revocandi* with intention to produce that effect."⁵

There are two important restrictions on the working of this doctrine, which, if worked out to their logical conclusion, would limit the doctrine to cases of mistake. The first is that the facts from which the condition is implied must be apparent on the face of

² Campbell v. French, 3 Ves. Jr. 321 (Eng. 1797).

³ *Supra*, n. 1.

⁴ Winsor v. Pratt, 2 Brod. & B. 650 (Eng. 1821); Dixon v. Solicitor of the Treasury, 21 T. L. J. 145 (Eng. 1904); as to setting up original terms when still decipherable, although covered by unattested alterations, see *In re Knapen's Will*, 75 Vt. 146 (1903).

⁵ Emenuker's Estate, 218 Pa. 369 (1907), in which the new will was to be an exact duplicate of the old, except that it was to contain bequests of one dollar to each of testatrix's children, since she was advised that was essential to the validity of the will. A Georgia case would limit the doctrine to cases of equivocal acts which may or may not constitute a revocation, in which case there is no revocation unless a new will is made, but the case holds that if the will is once revoked, it cannot again be revived, no matter what the intention of the testator may have been as to making a new will or setting up an unattested one. McIntyre v. McIntyre, 120 Ga. 671 (1904).

the will and cannot be proved by facts *dehors* the instrument.⁶ This is no more than saying that the court can take into consideration only what the testator has declared in statutory form to alter his other expressions so declared. Why not go a step further and say that a revocation shall not be conditional unless the testator has said and said in statutory form, that it should be conditional? The second limitation is that the doctrine cannot apply when the facts on which the revocation was based were peculiarly within the personal knowledge of the testator.⁷ This amounts to an admission that testators may assign as reasons for a revocation facts which they know to be false. And there is the inherent weakness of the whole doctrine of dependent relative revocation. There is no denying the fact that testators are deceitful. Many a worthy charity has been saved from bankruptcy by the political rivalry of testator and legatee, yet in revoking the bequest rashly made to his friend of former years, the testator will invariably say, "Having at last been brought to see things in their true light, and realizing that these worldly goods which I have accumulated are not mine to dispose of as I will, but that they are a noble trust, *etc.*, it is my unpleasant duty, in order to carry out this bequest to this charity to revoke the bequest to my friend." One can hardly say that the revocation was dependent upon the carrying out of the bequest. The revocation was the important thing and not the bequest. The Melville case⁸ is practically the same, except that the testator had loftier motives. As courts have time and again argued, there is no proof that decedent would not have preferred intestacy to the carrying out of the revoked will or codicil.⁹

As a matter of fact, all jurisdictions agree that on the facts of the Melville case, the doctrine should not apply, but it is impossible to see how that is held consistently with other cases in jurisdictions where the doctrine applies even where there is no element of mistake. After all, when it is possible for a man to make a revocation conditional in terms¹⁰ there seems to be no excuse for implying one where he does not declare the condition to exist.¹¹

J. F. H.

⁶ *Dunham v. Averill*, 45 Conn. 61 (1877); *Anderson v. Williams*, 104 N. E. Rep. 659 (Ill. 1914).

⁷ *Hayes v. Hayes*, 21 N. J. Eq. 265 (1870).

⁸ *Supra*, n. 1.

⁹ *Dickinson v. Swatman*, 4 Sw. & Tr. 205 (Eng. 1860), which has been criticized in England, but followed almost everywhere else.

¹⁰ *In re Hamilton's Estate*, 74 Pa. 69 (1873); *in re Stamm's Will*, 94 N. Y. Supp. 588 (1905), bequest conditioned on legatees' presenting no claims against estate.

¹¹ See 49 U. OF P. L. R. 21 (1901) for a review and analysis of the leading cases on this subject. An important case since decided is *Anderson v. Williams*, *supra*, n. 6, in which testator reduced fee to spendthrift trust. Court refused to rule that on death of husband, on whose account the trust was made, the revocation was void.